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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

FIDELITY NATIONAL TITLE  
INSURANCE COMPANY,

Plaintiff and Respondent,

v.

ROBERT E. ZUCKERMAN et al.,

Defendants and Appellants.

B265557

(Los Angeles County  
Super. Ct. No. YC 054930)

APPEAL from a judgment of the Superior Court of Los Angeles  
County, Ramona G. See, Judge. Affirmed.

Garcia & Reed and Raul B. Garcia for Defendants and Appellants.

Fidelity National Law Group, Helen P. Hoeffel and Kevin  
Broersma for Plaintiff and Respondent.

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## INTRODUCTION

This appeal is a tempest in a teapot created solely by the actions of Defendants and Appellants Robert and Kenneth Zuckerman. Defendants appeal a \$750,000 judgment entered against them for defaulting on the terms of a settlement agreement with Plaintiff Fidelity National Title Insurance Company (Fidelity). Defendants argue that the trial court lacked jurisdiction to enter the judgment pursuant to Code of Civil Procedure<sup>1</sup> section 664.6. We affirm because the parties expressly agreed in writing, prior to dismissal of the underlying action, that the court would retain jurisdiction to enforce the settlement agreement. We also conclude that Defendants are estopped from challenging entry of judgment.

## FACTS AND PROCEDURAL BACKGROUND

Fidelity sued Defendants in March 2007. On December 19, 2008, the parties settled their dispute. To effectuate their settlement, counsel and/or the parties executed three documents. First was the Settlement Agreement. Signed by defendant Robert Zuckerman, plaintiff Fidelity, and their counsel on December 19, 2008, the agreement states that if Defendants “fail[ed] to make ‘full payment’ . . . , [Fidelity] shall be entitled to judgment . . . for the sum of \$750,000.” The agreement provided that plaintiff would dismiss the action and that the trial court “shall continue to retain jurisdiction under [section] 664.6 for the purpose of resolving any disputes over the terms of this Agreement, enforcement thereof, or to redress any breach of the provisions hereof.”<sup>2</sup>

The second document was a Stipulation for Judgment executed the next day as required by the settlement agreement. All parties along with their counsel signed the Stipulation for Judgment. The Stipulation for Judgment stated that “notwithstanding the previous entry of dismissals in

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<sup>1</sup> All subsequent statutory references are to the Code of Civil Procedure.

<sup>2</sup> In the trial court, Defendants argued that in any event judgment should not be entered against Kenneth Zuckerman because he did not sign the settlement agreement. This argument has not been raised on appeal and will not be considered. (*Conner v. Rose* (1963) 219 Cal.App.2d 327, 329 [it is appellant’s burden to show error on appeal].)

favor of all Defendants the Court would continue to retain jurisdiction over the parties for the purpose of enforcing the parties' written Settlement Agreement in accordance with its terms pursuant to the provisions of [section] 664.6 and for the purpose of entering a judgment consistent therewith."

The third document was a Stipulation for Dismissal of Action and Reservation of Jurisdiction by the Court signed only by counsel. The Stipulation for Dismissal recited: "The parties' written Settlement Agreement (the terms of which are confidential and may not be disclosed except as expressly provided in the Settlement Agreement itself) provides that the Court shall retain jurisdiction over the parties to continue to entertain proceedings to enforce the terms of the parties' settlement in accordance with the terms thereof by judgment or otherwise and as authorized by [section] 664.6."

On December 23, 2008, Defendants filed an ex parte application for dismissal and reservation of the court's jurisdiction in connection with the settlement. Attached to Defendants' ex parte application was the Stipulation for Dismissal signed only by counsel and Declaration of Jerald E. Gale, defendants' counsel, explaining that the actual signed Settlement Agreement was not filed with the stipulation because its terms were confidential. Defendants also lodged a proposed order dismissing the action and retaining jurisdiction pursuant to section 664.6. The court signed the proposed order, granting Defendants' request for dismissal and reservation of jurisdiction pursuant to section 664.6.

Defendants subsequently defaulted. On June 19, 2015, Fidelity moved to enforce the settlement under section 664.6. Fidelity also filed a Memorandum of Points and Authorities in Support of Ex Parte Application for Entry of Stipulated Judgment and Exercise of Jurisdiction. Attached to Fidelity's ex parte application were four exhibits: Defendants' original ex parte application for entry of dismissal and retention of jurisdiction (Exhibit A), the Stipulation for Dismissal and Order Thereon (Exhibit B), the Settlement Agreement (Exhibit C), and the Stipulation for Judgment (Exhibit D). Exhibit D, the Stipulation for Judgment, was plainly signed by the parties and includes an express agreement that the court would retain

jurisdiction to enforce the settlement agreement. Over Defendants' objection, the trial court exercised jurisdiction, granted the application, and entered judgment against Defendants in the amount of \$750,000. Defendants now appeal.

## DISCUSSION

After obtaining all relief they asked for in the trial court, Defendants now assert that the trial court lacked jurisdiction to enforce the settlement because the actual document containing all of the parties' signatures was not presented to the court at the time it originally retained jurisdiction over the settlement. They assert that the trial court lost jurisdiction in December 2008 when the court dismissed the case because the parties did not request the court to retain jurisdiction orally in court or in writing. As the facts are undisputed, we review this issue of law de novo. (*Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1126; *Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 437 (*Wackeen*).) We reject this claim.

Pursuant to section 664.6, "even though a settlement may call for a case to be dismissed, or the plaintiff may dismiss the suit of its own accord, the court may nevertheless retain jurisdiction to enforce the terms of the settlement, until such time as all of its terms have been performed by the parties, *if the parties have requested this specific retention of jurisdiction.*" (*Wackeen, supra*, 97 Cal.App.4th at p. 439.) For the court to retain jurisdiction, "the request must be made (1) during the pendency of the case, not after the case has been dismissed in its entirety, (2) by the parties themselves, and (3) either in a writing signed by the parties or orally before the court." (*Id.* at p. 440.) "Like the stipulated settlement itself, a request that jurisdiction be retained until the settlement has been fully performed must be made either in a writing signed by the parties themselves, or orally before the court by the parties themselves, not by their attorneys of record, their spouses, or other such agents." (*Ibid.*)

Here, all three requirements have been satisfied. Per Jerald E. Gale's December 22, 2008 declaration, the parties signed a Settlement Agreement (which includes an express request that the court retain jurisdiction) on December 19, 2008, before the case was dismissed on December 23, 2008. In addition, the parties (not just their attorneys) expressly agreed that the court

would retain jurisdiction over the case pursuant to section 664.6 within the Settlement Agreement and the Stipulation for Judgment. (See *Wackeen*, *supra*, 97 Cal.App.4th at p. 440 [“a written or oral request for retention of jurisdiction may, but need not be, a part of the settlement agreement itself”].) Finally, the Stipulation for Judgment and Settlement Agreement were in writing.

Defendants nonetheless assert the court lacks jurisdiction because, “[t]here is absolutely no evidence in the record that there was an oral request by [Fidelity] or any Defendant, prior to dismissal, that the court retain jurisdiction. There is absolutely no evidence in the record that the parties themselves signed a request to retain jurisdiction and that the signed writing was presented to the court before dismissal in 2008.” We disagree.

First, the record does include the Stipulation for Judgment signed by all of the parties. Because the record on appeal supplied by Defendant excluded the signed Settlement Agreement and the Stipulation for Judgment, Fidelity filed a supplemental clerk’s transcript that includes both documents.

Second, Defendants assert that the actual Settlement Agreement and Stipulation for Judgment signed by the parties were never provided to the court before it retained jurisdiction and dismissed the action and therefore the court had no proof of the parties’ written request. Specifically, Defendants argue: “Whatever language may be in the settlement agreement, since not presented to the court at the time of dismissal, is ineffective to restore jurisdiction once the case is dismissed.”

We have found no authority for the proposition that the trial court cannot *retain* jurisdiction in reliance on the representation of all counsel that the parties have executed a written agreement to that effect. That is the situation in this case. Defendants’ counsel filed his Declaration of Jerald E. Gale in support of their ex parte application for order dismissing the action, in which Defendants advised the court that the parties had executed a written agreement for retention of jurisdiction, but that the agreement would not be filed because it was confidential.

Defendants rely on the following language in *Wackeen*: “[T]he request for retention of jurisdiction must conform to the same three requirements which the Legislature and the courts have deemed necessary for [section]

664.6 enforcement of the settlement itself: the request must be made (1) during the pendency of the case, not after the case has been dismissed in its entirety, (2) by the parties themselves, and (3) either in a writing signed by the parties or orally before the court.” (*Wackeen, supra*, 97 Cal.App.4th at p. 440.) There is nothing in this language that requires the parties to present the actual signed written request to the court as a condition to retaining jurisdiction. This makes sense for precisely the circumstances that occurred here: as Defendants advised the court, the parties wanted their signed settlement agreement, which contained the request to retain jurisdiction, to remain confidential.

However, to the extent that Defendants construe the word “request” in *Wackeen* to mean only the actual pleading filed in court, the facts of *Wackeen* do not support such an interpretation. The quoted language was prompted by parties who had never included an *express* request for retention of jurisdiction in any of their settlement documents. At issue was whether such a request could be inferred or implied by other language in the parties’ writings. The *Wackeen* court held that a request to retain jurisdiction cannot be inferred or implied; it must be express, clear, and unambiguous. (*Wackeen, supra*, 97 Cal.App.4th at p. 440.) The court was not referring to the actual pleading filed to advise the court of the request; it was referring to the document signed by the parties.

Thus, *Wackeen* does not hold that the court must have the actual written request attached to a pleading in the file when it *retains* jurisdiction. Instead, *Wackeen* holds that the court cannot construct a request to retain jurisdiction from an unspecific request. Here the written request presented to the court was express, clear, and unambiguous.<sup>3</sup>

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<sup>3</sup> Defendants also cite *Hagan Engineering, Inc. v. Mills* (2003) 115 Cal.App.4th 1004, 1010 (*Hagan*), for the proposition that the court could not retain jurisdiction because Defendants failed to present the court with the signed settlement requesting the court retain jurisdiction. *Hagan* does not stand for this proposition, but rather holds that the parties must not only agree to have the court retain jurisdiction, but must also request the court to do so. (*Ibid.*) Thus, *Hagan* does not support their contentions.

Having properly retained jurisdiction, the court also properly exercised jurisdiction. At this point, the court needed proof that there was a written request executed by the parties prior to the dismissal of the action. In asking the court to exercise its jurisdiction, Plaintiff Fidelity provided the court with the Stipulation for Judgment and the Settlement Agreement, both of which included the parties' written request to retain jurisdiction prior to dismissal. The court considered the pleadings filed by Fidelity and properly entered judgment.

We find no error. Nevertheless, to the extent that the Settlement Agreement and Stipulation for Judgment were not attached to Defendants' original pleading asking the court to retain jurisdiction, Defendants are estopped from benefitting from this omission. "Under the doctrine of invited error, when a party by its own conduct induces the commission of error, it may not claim on appeal that the judgment should be reversed because of that error." (*Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 212.) In this case, Defendants petitioned the court for dismissal and retention of jurisdiction pursuant to section 664.6. Defendants attached the stipulation by counsel explaining that the parties entered into a confidential settlement agreement containing a written request that the court retain jurisdiction to enforce the agreement. In providing these documents, Defendants omitted copies of the Settlement Agreement and the Stipulation for Judgment signed by the parties. Defendants, who have never denied executing the written requests, cannot now complain of their own error.

Based on the foregoing, we conclude that the trial court properly retained and exercised jurisdiction pursuant to section 664.6. We affirm the judgment.

### **DISPOSITION**

The judgment is affirmed. Plaintiff and Appellant Fidelity National Title Insurance Company is awarded costs on appeal.

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STRATTON, J.\*

We concur:

EDMON, P. J.

ALDRICH, J.

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.